Sharayu

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 3255 OF 1995

WITH

SUIT NO. 4339 OF 1995

ALONG WITH

CHAMBER SUMMONS NO. 1641 OF 2003

ALONG WITH

TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY SUIT NO. 56 OF 1995

IN

TESTAMENTARY PETITION NO. 494 OF 1989

WITH

TESTAMENTARY SUIT NO. 72 OF 1989

~~Ayodyanath Harichand Kapur~~ …Plaintiffs
since deceased
Dolly Ayodyanath Kapur alias
Harsha Deepak Tindari & Ors.

Versus

Bhupendranath Harichand Kapur …Defendant

Mr. M.C. Hegde, *for the Plaintiffs in S.3255/95*
Mr. Ajit Shukla, *a/w Nitin Shukla, for the Defendant in S.3255/95 & Plaintiffs in TS 72/89 & 56/95*
Mr. S.C. Joshi, *for the Plaintiffs in S. 4339/95 & Defendant in TS 56/95*

CORAM: G.S. PATEL, J
DATED: 3rd March 2015

PC:-

1. Testamentary Suit No. 72 of 1989 arose out of the Testamentary Petition No. 494 of 1989 upon a caveat being filed. The disputes between the Caveator and the Petitioner were resolved and Minutes were filed on 2nd December 1992.

2. Despite these minutes, it appears that the Petition remained pending since certain office objections had not been removed. While it remained in that state, a second Caveat was filed on the very same Testamentary Petition No. 494 of 1989. This resulted in that very Petition being once again renumbered, this time as Testamentary Suit No. 56 of 1995. Thus, the position was that in a single Testamentary Petition propounding one Will, there were two contested actions each separately numbered as a Suit.

3. The Caveator in the first Testamentary Suit No. 72 of 1989 then filed Suit No. 3255 of 1995 seeking to have the Minutes of the order dated 2nd December 1992 set aside.

4. There is a fourth action, and this is a Suit No. 4339 of 1995, which is for partition.

5. On 27th March 2012 issues were framed in Testamentary Suit No. 56 of 1995 and in partition Suit No. 4339 of 1995. There

was thereafter, a further order of 6th July 2012 which *inter alia* directed that Suit No. 3255 of 1995 (seeking to set aside the Minutes of the order dated 2nd December 1992) was to be heard along with the subsequent Testamentary Suit No. 56 of 1995. In Suit No. 3255 of 1995 issues were framed on 20th March 2012.

6. The result of this is that, leaving aside the partition Suit, Suit No. 3255 of 1995 and Testamentary Suit No. 56 of 1995 were required to proceed to trial. The Plaintiff in Suit No.3255 of 1995 is or was the Caveator/Defendant in the first Testamentary Suit No.72 of 1989. Since evidence in Suit No.3255 of 1995 and Testamentary Suit No. 56 of 1995 is common, the concerns of the Plaintiff in Suit No.3255 of 1995 in relation to the challenge to the Will in Testamentary Suit No.72 of 1989 are fully taken care of.

7. Mr. Shukla, learned Counsel for the Plaintiffs in Testamentary Suit No. 56 of 1995, states that the Plaintiff in that Suit has already led the evidence of two witnesses, both of whom has been cross examined not only by the Caveator in Testamentary Suit No. 56 of 1995 but also by the Plaintiffs in Suit No. 3255 of 1995. Reserving his right to lead evidence in rebuttal, Mr. Shukla closes the Plaintiffs' case in the subsequent Testamentary Suit No. 56 of 1995.

8. The Caveator/Defendant in Testamentary Suit No. 56 of 1995 and the Plaintiffs in Suit No. 3255 of 1995 will now file and serve their respective Affidavits of Documents, compilations of documents and Affidavits in lieu of Examination in Chief on or before 23rd March 2015. List this group of matters for marking of

documents of the Defendant in Testamentary Suit No. 56 of 1995 and the Plaintiffs in Suit No. 3255 of 1995 on 30th March 2015, high on board.

(G. S. PATEL, J.)